

MAY 10 1979

MICHAEL RODAK, JR., CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1978

No. 78-1534

MICHAEL R. McMAHON **Petitioner**

versus

KENTUCKY BAR ASSOCIATION . . . **Respondent**

On Petition For Writ Of Certiorari
To The Supreme Court Of Kentucky

REPLY BRIEF BY PETITIONER

BURTON MILWARD, JR.
319 Kentucky Home Life Building
Louisville, Kentucky 40202

Counsel for Petitioner

May 8, 1979

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IN THE
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October Term, 1978

No. 78-1534

MICHAEL R. McMAHON - - - *Petitioner*

v.

KENTUCKY BAR ASSOCIATION - - - *Respondent*

ON PETITION FOR A WRIT OF CERTIORARI TO THE
SUPREME COURT OF KENTUCKY

REPLY BRIEF BY PETITIONER

The Petitioner, MICHAEL R. McMAHON, respectfully submits this Reply Brief.

PURPOSE OF REPLY BRIEF

The purpose of this Reply Brief is to correct an error in the jurisdictional statement of the Petition and to reply to the Brief for Respondent in Opposition.

JURISDICTION

In the Petition filed in this proceeding, the jurisdictional statement invoked jurisdiction "under 28 U.S.C. §1254(1)." [Petition for a Writ of Certiorari

to the Supreme Court of Kentucky, p. 2.] This is erroneous, and jurisdiction in this proceeding is properly invoked under 28 U.S.C. §1257(3).

REPLY

In addition to responding to the Questions Presented on the merits, the Respondent has contended that the issues raised by the Petitioner were not before the court below as required by 28 U.S.C. §1257(3).

The fact is that the very issues now raised upon this Petition were the *only* defensive issues before the court below. The Petitioner's defense—at every stage of the disciplinary proceedings—was alcoholism. Further, the Petitioner specifically addressed the severity-of-punishment issue before the court below. *See*, for example, Petitioner's argument to the Supreme Court of Kentucky, “. . . the Punishment Imposed Was Too Severe,” reproduced in the Appendix to the Brief for Respondent in Opposition, pp. 12-A-13-A. *See also*, for example, Petitioner's Petition for Rehearing to the Supreme Court of Kentucky, “The Punishment Is Severe and Grossly Out of Proportion to What Occurred,” reproduced in the Appendix to the Brief for Respondent in Opposition, p. 14-A.

CONCLUSION

Because constitutional protections of due process and against cruel and unusual punishment yet exist to bar punishment for illness and punishment which serves no purpose, because Petitioner has overcome the disease which crippled him and caused the neglect involved, because Petitioner has voluntarily made full restitution of the claim involved, because Petitioner is now fit to continue in the practice of law, and because the punishment imposed by the court below is manifestly unjust in this case, it is respectfully submitted that a writ of certiorari should issue to review the judgment and opinion of the Supreme Court of Kentucky.

Respectfully submitted,

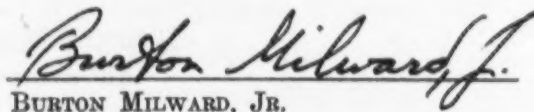
BURTON MILWARD, JR.
319 Kentucky Home Life Building
Louisville, Kentucky 40202
Counsel for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that three (3) copies of Petitioner's Reply Brief By Petitioner have been mailed, postage prepaid, this the 8 day of May, 1979, to:

Hon. Leslie G. Whitmer
Director, Kentucky Bar Association
Bush Building
403 Wapping Street
Frankfort, Kentucky 40601
Counsel for Respondent

All parties required to be served have been served.


BURTON MILWARD, JR.

Member of the Supreme Court Bar
319 Kentucky Home Life Building
Louisville, Kentucky 40202
(502) 587-8987

Counsel for Petitioner